

CHARGE TO THE GRAND JURY

January Term, 2005

MEMBERS OF THE GRAND JURY:

There are six (6) divisions of the Criminal Court of Davidson County, Tennessee, the Judge of each Division exercising the same authority and having the same responsibility as the others. The Judge of each Division is responsible for impaneling the Grand Jury at alternating terms, and this particular term, it is my duty to impanel you and give to you in writing the charge as to the law applicable to the Grand Jury, as required by statute. You are, however, the Grand Jury of the Criminal Court of Davidson County and the six divisions thereof. The Grand Jury is vital to the peace, happiness, and welfare of our community.

As Grand Jurors, you are now approaching the performance of one of the most sacred duties of citizenship, the meting out of justice. The rich and the poor, and persons of every race, creed and condition stand alike before the bar of justice, and you must consider and weigh the evidence that will be presented before you carefully, calmly and dispassionately, without the slightest trace of sympathy or prejudice for or against any party to any proceeding.

You have subscribed to an oath which is one of deep meaning, and you must take your oath seriously, and fearlessly investigate any and all forms of violations of the criminal laws of our State.

Service on the Grand Jury is one of importance and responsibility. It requires persons of courage and character. You cannot be influenced by friendship or hatred, by hope or promise of reward, or by malice or ill-will. There might be instances where individuals would not be willing to accuse those guilty or suspected of crime. Under proper circumstances the Grand Jury should courageously rise to the occasion and fearlessly accuse and indict where justified by the law and the facts. But on the other hand, if an accusation is not well-founded, the Grand Jury should just as fearlessly and promptly deny the charges and refuse an indictment, regardless of how strong and bitter the prejudice or how loud the public clamor of an accusation. You must not suffer the innocent to be harassed, nor should you suffer those who deserve prosecution to escape. By accusing those who deserve prosecution you will preserve the public welfare and secure the safety of the citizens of this County.

It is not for you to consider in your deliberations whether or not the offender should be punished or unpunished, or whether the punishment is too severe or too mild. You are not to be concerned with the standing or station in life of the accused, his or her age, his or her race, creed, or color. You are to be concerned only with whether or not a criminal offense has

been committed in this jurisdiction, and whether or not a prima facie case has been made out against the accused. If such a case has been made out, it is your solemn duty to return a "True Bill." If, in your opinion, it has not, then it is your duty to return a "No True Bill."

In practice, under our system in Tennessee, there are two types of juries: the Grand Jury, which sits as an accusing body; and the Trial or Petit Jury, that determines guilt or innocence of the accused.

Legally, all Grand Juries are alike. It is the duty of the Grand Jury to bring to light for examination and punishment all violence, outrage, indecency, terror or anything that may occasion danger, disturbance, or dismay to the citizens of this County. The Court's charge is a guide to you but your action is dependent solely upon your oath and upon your own conscience as good citizens to bring criminals to justice and to protect the innocent from injustice.

In your deliberation you are only to determine two things. First, whether or not a criminal offense has been committed; and second, whether the person or persons accused of the crime are probably guilty of that offense. To repeat, all that is necessary for you to consider is whether a prima facie case is made out by witnesses appearing before you. The

words "prima facie" mean "at first sight," or "on first appearance," or "on the face of it." When a defendant is tried in court, there can be no conviction unless the guilt of the accused is established by proof beyond a reasonable doubt. This strict rule does not apply to investigations before the Grand Jury. If you are satisfied that an offense has been committed, and that the one under investigation is probably guilty of that offense, you should return a presentment or indictment.

At this time, I would like to stress this particular point: The Grand Jury is not a trial jury and it is not your duty to undertake the trial of cases.

Rule 6(j)(7) of the Tennessee Rules of Criminal Procedure provides as follows:

No witness shall be indicted for any offense in relation to which the witness compelled to testify before the grand jury by the district attorney general.

This statute is applicable only to persons brought before the Grand Jury by compulsion to testify against others. One who voluntarily testifies before the Grand Jury without being compelled or summoned is not a witness within the legal sense and is not entitled to immunity granted by this statute.

You should never call the defendant or accused person before your body to hear testimony in regard to any accusation, for you would then automatically, under our laws, give him immunity from prosecution. Please remember this—matters of defense should never be made known to the Grand Jury and it is highly improper for such testimony to be brought before the Grand Jury either directly or indirectly. In the Grand Jury room you will only hear the witnesses for the prosecution, or the State's side of the case, and it is not proper for you to go into any matters of defense. The guilt or innocence of the accused is determined by the Court and a trial jury, whose duty is separate and apart from yours.

The law provides that no citizen shall be put to trial for any offense except by indictment or presentment by a Grand Jury elected and sworn according to law.

A person having been arrested upon a criminal charge is entitled to know the exact nature of the offense of which he or she is accused, and this is made known to him or her either by an indictment or presentment.

PRESENTMENTS AND INDICTMENTS

At this time, it becomes my duty to explain to you what constitutes an indictment and presentment, the different manner in which they are brought, and the manner in which you may bring them. I want you to clearly and distinctly understand this part of the charge because it will be of some assistance to you in understanding some of the things that are to follow.

A presentment is a written accusation by the Grand Jury of an offense from their own knowledge or observation, or from information obtained under their inquisitorial power, without any bill of indictment brought by the State. Under our Code, the Grand Jury has inquisitorial power of all offenses, either misdemeanor or felony.

An indictment is a written charge or accusation against one or more persons, charging a criminal offense against the laws of this State, made by the District Attorney General and signed by him. An indictment must always be signed by the District Attorney General before it is submitted to the Grand Jury for their consideration and generally must have a prosecutor endorsed therein while in a presentment it is not necessary that the same be signed by the District Attorney General or that any prosecutor be named in or on such presentment. The indictment comes to the Grand Jury through the District Attorney General, while the

presentment arises in and with the Grand Jury itself, and is an accusation by the Grand Jury as an investigating body upon sufficient information.

The Tennessee Rules of Criminal Procedure provide that, "The Grand Jury shall send for witnesses whenever they, or any of them, suspect that an indictable offense has been committed."

So, it is specifically made the duty of the Grand Jury, and each member of the Grand Jury, that if they, or any of them, suspect that any indictable offense has been committed, to send for witnesses to be brought before them, and the Grand Jury, under their inquisitorial power, may inquire into such matters for the purpose of determining whether or not there has been an indictable offense committed, and if so, by whom.

In such cases as the Grand Jury may use the inquisitorial power, the Foreperson of the Grand Jury may have subpoenas issued for witnesses and may compel their attendance before your body. If after investigation of the facts obtained from witnesses brought before you, you are satisfied that an offense has been committed and that the party or parties charged therewith are probably guilty, then the Foreperson of the Grand Jury shall endorse the back of the presentment, "A True Bill" and sign his or her name as Foreperson, and the other members of the Grand Jury shall also then affix their signatures. It requires twelve members of

the Grand Jury to present a defendant for any criminal offense with which he or she is charged.

In order for the Grand Jury to operate efficiently, the District Attorney General should be empowered to subpoena witnesses to appear before the Grand Jury in order to testify about cases pending before it. Also, criminal investigations increasingly require law enforcement to obtain a variety of records such as hospital reports, financial records, business records and telephone records. These and similar records are typically not provided to law enforcement without a subpoena. In a criminal investigation, only the Grand Jury and the Tennessee Bureau of Investigation have subpoena power; consequently, for the District Attorney General or the Metropolitan Police Department to obtain records like those mentioned above, where the TBI is not involved, they must have a Grand Jury subpoena. The District Attorney General will request that this body permit his office to issue subpoenas in the name of the Grand Jury both to secure the attendance of witnesses and to obtain information that he or his designee think is necessary to further on-going criminal investigations. You should give careful consideration to the District Attorney's request and make whatever judgment you deem appropriate.

I would like to call your attention and emphasize the oath you have taken. One feature of that oath is that you will keep secret every matter coming before you. This means you will not tell of testimony coming before you, or of the vote of your members, or what occurs in the course of your deliberations. You must not even discuss these matters with the immediate members of your family, for to disclose the testimony of any witness appearing before your body is a flagrant contempt of Court, for which any member of your body will be held to a strict accounting. You can readily see the reason for this rule, for to permit a Grand Juror to discuss outside the Grand Jury room the proof before that body would in many instances permit those guilty or suspected of criminal offenses to escape apprehension and never be brought to trial, and in other instances would permit those accused of a crime to concoct defenses to offset the testimony given before your body.

A member of the Grand Jury may be required by the Court to disclose the testimony of a witness examined before them, for the purpose of ascertaining whether it is consistent with that given by the witness before the Court, or to disclose the testimony given before them by any witness upon a charge against him or her for perjury.

No member of the Grand Jury shall be present during or take part in the consideration of a charge or deliberation of his fellow jurors thereon if:

- 1) He or she is charged with an indictable offense; or
- 2) He or she is a prosecutor; or
- 3) The offense was committed against his or her person or property; or
- 4) He or she is related to the person charged or to the victim of the alleged crime by blood or marriage within the sixth degree, computing by the civil law.

If due to the exclusion of an interested grand juror, the jurors in the investigation of any matter are reduced below the number of twelve (12), the vacancy will be filled by the Court upon being advised of the vacancy. But it is the responsibility of the Grand Jury to make certain that any new or temporary member has read these instructions in their entirety and understands them.

I want to impress upon you at this time and to specifically instruct you, in no uncertain terms, that it is a grave violation of the law for anyone to approach any member of the Grand Jury about matters that they are considering, or will consider, and it is the order of the Court at this time

that if any person or persons approach any member of the Grand Jury in connection with any matter then pending before it, that it will be immediately reported to the Court, at which time the Court will take such action as to forever prevent a repetition of such reprehensible conduct on the part of those accused of crime, or their accomplices. No one should attempt to discuss any case with you, except after such person is duly sworn and is giving his or her testimony before you as a body.

I shall now call to your attention certain duties of the Grand Jury which are specifically set forth in the Tennessee Rules of Criminal Procedure.

It is the duty of the Grand Jury to:

- 1) Inquire into, consider, and act upon all criminal cases submitted to it by the District Attorney General; and
- 2) Inquire into any report of a criminal offense brought to its attention by a member of the Grand Jury; and
- 3) Inquire into the condition and management of prisons and other county buildings and institutions within the county. You are entitled to free access, at all proper hours, to any of these buildings. The County is required to provide suitable and safe quarters for county prisoners, and these prisoners are entitled to fair treatment and sufficient food and clothing; and
- 4) Inquire into the condition of the county treasury; and

- 5) Inquire into the correctness and sufficiency of the bonds of county officers; and
- 6) Inquire into any abuse of office by state or local officers; and
- 7) Report the results of its actions to the Court.

It is impossible in a charge for the Court to give you the law applicable to all of the offenses that may be investigated by you, and the Legislature recognized this fact and has provided as follows:

Whenever required by the Grand Jury, the prosecuting attorney may attend before it for the purpose of giving legal advice as to any matters cognizable to them, but shall not be present, nor shall any other officer or person be present, when the question is taken upon the finding of an indictment.

Under this Section of the Code, just quoted, if you desire any legal information, the District Attorney will be glad to come before your body and advise you, upon request, on any matters regarding the law on which you desire information. All matters of fact are matters that are to be determined by the Grand Jury alone, and you should never inquire of the District Attorney, or the Court, with reference to matters of fact, but only as to legal matters.

I know each of you will work harmoniously and conscientiously with your Foreperson, the District Attorney General's staff, and various

police officials who frequently appear before the Grand Jury. I do not wish to discourage this high and proper relationship; however, I do wish to strongly impress upon you the necessity for each of you to retain his or her independence, and your collective independence as a body. There is often times a tendency on the part of members of the Grand Jury to assume that the District Attorney General's Office and the Police Department would not submit a matter to the Grand Jury unless it is a case in which a presentment or indictment should be returned. This is improper on the part of a member of the Grand jury and can lead to much unnecessary expense on the part of the county in processing cases that should not be placed upon the trial docket of the criminal courts. It is an undue hardship upon the individual who is indicted on insufficient evidence. Further, officers who obtain an indictment upon skimpy evidence naturally then let up on their investigation and move to other more pressing matters. When this otherwise weak case comes on to be tried in the criminal court and under attack by adversary counsel, the evidence is insufficient. Therefore, do not hesitate to reject a case in which you do not believe the evidence is sufficient to warrant a presentment or indictment. Do not feel that this is a conclusive acquittal of the accused, for the case may be resubmitted to the next Grand Jury if more evidence is available.

At this point, I would like to briefly discuss how the Grand Jury operates.

When a witness is called before your body to testify, first the witness shall be sworn by the Foreperson, who shall endorse the fact on the subpoena, and sign his or her name to such endorsement officially. It is best that the examination be conducted in an orderly way. So, therefore, I suggest that the Foreperson of this Grand Jury ask the witness such questions as he or she deems necessary, or the District Attorney may, if you so desire, question any witness brought before your body. If, after the Foreperson or District Attorney has interrogated the witness, other members of the Grand Jury desire further information, let such member or members as desire to question the witness obtain the permission of the Foreperson to do so. If the examination were conducted in any other way, that is, if several members of the Grand Jury were questioning a witness at the same time, the witness might become confused and unintentionally answer incorrectly, or the Grand Jury might not understand the meaning or intent of the testimony given by the witness.

When you retire to your Jury room, you will proceed with the organization of your Grand Jury. You will elect a secretary, whose duty it is to keep a record of your proceedings.

The Judges of the Courts authorized by law to charge the Grand Juries and to receive the reports of those bodies shall appoint the Foreperson of the grand juries in the counties of their respective jurisdictions. If concurrent grand juries are impaneled, a Foreperson shall be appointed for each grand jury. Every person appointed as a Foreperson shall possess all the qualifications of a juror. It shall be the duty of such Foreperson of the Grand Jury to assist and cooperate with the District Attorney General in ferreting out crime, to the end that the laws may be faithfully enforced. During the term, the Foreperson or the District Attorney General may order the issuance of subpoenas for witnesses to go before the Grand Jury. The Foreperson may vote with the Grand Jury and his or her vote shall count toward the twelve (12) necessary for the return of an indictment. Such Forepersons are directed out of term to advise the District Attorney General with respect to law violations and furnish him names of witnesses, whom the District Attorney General may, if he deems proper, order summoned to go before the Grand Jury at the next term.

When the Grand Jury shall have acted upon cases brought before them, it shall be the duty of the Foreperson of the Grand Jury to bring said indictments, presentments, and no true bills to the Clerk of the Court in order that they may be filed by the Clerk of the Court.

You will find, Members of the Grand Jury, that all of the officers of this Court will be willing and glad, at any time, to assist you in your work in any way that may be right and proper.

Enforcement of law and order deals with the very fabric of government and is the concern of all the people. Therefore, the work you do is most important and carries a high degree of responsibility. Remember, law enforcement in this County is a local matter and the place for action against the lawless and underworld elements is right here in the grand jury room.

It is not necessary for me to instruct you at length on the subject of law enforcement. Suffice it to say, there can be no proper enforcement of the criminal laws without careful, conscientious and capable work on the part of the Grand Jury. You must act without favor, prejudice or partiality. Let me caution you not to deal in trivial or insignificant matters. Use your common sense and good judgment in dealing with the problems that come before you. Keep and observe the

solemn oath you have taken and render justice in the matters investigated by you.

Each of you will immediately hereafter be furnished a copy of this charge, and the Foreperson has been designated. You may now retire to your jury room to organize and adopt rules governing your actions while serving as Grand Jurors for this term of court. Remember at all times that jury service is one of the highest services of citizenship, for by it the citizens participate in the administration of justice between individuals, and between government and the individual.


JUDGE CHERYL BLACKBURN

Date: 12/1/04